

Members

Sen. Robert Jackman, Chairperson
Sen. Johnny Nugent
Sen. Brandt Hershman
Sen. Allie Craycraft
Sen. James Lewis
Sen. Larry Lutz
Rep. Terry Goodin
Rep. Dale Grubb
Rep. Markt Lytle
Rep. Robert Cherry
Rep. William Friend
Rep. Richard Mangus



INTERIM STUDY COMMITTEE ON AGRICULTURE AND ANIMAL ISSUES

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MEETING MINUTES¹

Meeting Date: September 7, 2001
Meeting Time: 9:00 A.M.
Meeting Place: State House, 200 W. Washington
St., Room 404
Meeting City: Indianapolis, Indiana
Meeting Number: 2

Members Present: Sen. Robert Jackman, Chairperson; Sen. Johnny Nugent; Sen. Brandt Hershman; Sen. James Lewis; Sen. Larry Lutz; Rep. Dale Grubb; Rep. Robert Cherry; Rep. William Friend.

Members Absent: Sen. Allie Craycraft; Rep. Markt Lytle; Rep. Terry Goodin; Rep. Richard Mangus.

Introduction

Senator Jackman called the second meeting of the Interim Committee on Agricultural and Animal Issues to order at 9:00 a.m. on September 7, 2001. After welcoming the members and the audience to the meeting, Sen. Jackman handed out a news item related to ethanol (Exhibit 1) that he felt addressed many of the issues discussed in the Committee's first meeting. Senator Jackman then welcomed any of the Committee's members to make suggestion to either Rep. Grubb or the Chair for topics to be addressed during the third

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

committee meeting to be held on October 12, 2001.

The agenda for this meeting included a discussion of Genetically Modified Seeds and Other Modified Organisms (GMO) and a discussion of the Regulation of Pet Stores (HR 115). The first topic discussed was related to Genetically Modified Seeds and Organisms.

Troy Roush, Farmer, Van Buren, Indiana

Troy Roush testified on his family's dealings with the Monsanto Company. Mr. Roush specifically expressed concerns with Monsanto's business practices. Mr. Roush stated that his family was falsely accused of saving seed and breach of contract. He further said that under the plan to induce farmers not to infringe on patents, it appeared to him that Monsanto tried to make examples of the dominate farmers in a region.

Mr. Roush stated that he thought that what was needed was an independent third party to protect farmer's interest in the monitoring of crop samples. Mr. Roush also said that Monsanto's lawsuit has cost his family over \$200,000 in legal fees.

(A letter from the Roush family was distributed to members prior to the meeting. A copy of this letter can be found in Exhibit 2.)

Rodney Nelson, Farmer, North Dakota

(Handouts related to Rodney Nelson's testimony can be found in Exhibit 3.)

Rodney Nelson testified that his situation is similar to that of the Roush family. Mr. Nelson, a family farmer, stated that his family is also being sued by Monsanto for alleged saving of Round-Up Ready seeds. Mr. Nelson said that he felt Monsanto's practices were unfair.

In the context of the suit against him, Mr. Nelson discussed the issue of genetically modified crops (GM) contaminating non-GM crops. Mr. Nelson noted that GM plants could be found in a field of non-GM plants through plant volunteers, mechanical contamination, or through cross-pollination. Mr. Nelson cited several reports on the intermingling of GM crops and non-GM crops. Mr. Nelson stated that he felt something needed to be done so that patent infringement lawsuits could not be carried out against farmers who had inadvertently planted a non-GM crop contaminated with GM seeds.

Marshall Leaffer, Distinguished Scholar in Intellectual Property, Indiana School of Law

Professor Leaffer spoke on the development and history of patent law as it relates to plant material. He described three legal areas under which plant material may receive patent protection: the Plant Patent Act, the Plant Variety Protection Act, and utility patent protection. Mr. Leaffer stated that the Plant Patent Act (PPA) provided patent protection for asexual reproduction and did not extend that protection to seeds. The Plant Variety Protection Act (PVPA) passed the U.S. Congress in the 1970's and provided a type of protection, under the authority of the USDA, for plants produced from seed. The PVPA required that a developer must prove that the plant variety is new, distinct, uniform, and stable before it could receive protection. He noted that the congressional authority for the protections provided by the act came from the patent and trademark and the interstate commerce clauses of the U.S. Constitution. The PVPA also provided an exemption allowing growers to sell surplus seed. This exemption was repealed in 1994.

Lastly, Professor Leaffer discussed utility patent protection. He stated that prior to a U.S.

Supreme Court ruling (*Diamond v. Chakrabarty*) it was thought that the PPA and the PVPA prevented the use of utility patent protection on plant material. Mr. Leaffer said that a case currently before the Supreme Court, *J.E.M. Agricultural Supply v. Pioneer Hi-Bred* will determine whether the cumulative patent protection afforded under a utility patent is applicable to plant material. Unlike the protections under the PPA and the PVPA, which protect the whole plant, utility patent protection could allow for a cumulative patent protection of a plant; including, its genes, cells, and tissues.

Dr. Randy Woodson, Director of Agricultural Research, Purdue University

Dr. Woodson began his testimony by stating that he did not want to take sides in the committee's discussion, but to put the changes in the biotechnology field into the perspective of the university researcher. He stated that the goal of the Purdue program is to provide for the public good. He noted that the passage of the PVPA encouraged the private sector to become more involved in field. At that same time, the public university programs began to diminish their involvement.

Dr. Woodson then described Purdue's discovery of genetics that confer resistance in soybeans to the soybean cyst nematode. He stated that to get the germplasm out to the public, it was important that Purdue work with industry to disseminate the technology. In doing so, he said that Purdue licenses the technology to seed companies to get the material in existing soybean varieties and make it available to as many farmers as possible. He noted that these partnerships were essential in serving the public good. He also noted that intellectual property laws allow Purdue to receive modest fees for the research.

In response to a question, Dr. Woodson said that he did not think that research was hindered by plant patents, but he did think that changes could make it more difficult for the actual products from the university's research to make it into the marketplace.

Steve Ludwig, Indiana Soybean Growers Association & Indiana Soybean Board

Mr. Ludwig began his testimony by reading a portion of the American Soybean Association (ASA) by-laws as they relate to biotechnology. He stated that the ASA strongly supports biotechnology, but the group's members believe that certain controls need to be in place to prevent the commingling of biologically enhanced soybeans with non-biologically enhanced soybeans. He stated that the ASA demands due diligence to keep biologically enhanced soybeans from commercialization or export channels without a global agreement on the acceptability of biologically enhanced soybeans. Mr. Ludwig further stated that he believes the public and private sector should work together to develop a better soybean.

J. B. Ladd, Farmer, Southern Miami County, Indiana

Mr. Ladd testified that prior to the advent of Round-Up Ready soybeans, he saved his seeds to plant two-thirds of the next year's crop, and purchased the remainder of seeds required. He noted that under this practice, he was able to plant the crop for approximately \$7.67 /acre. He then stated that using Round-Up Ready soybeans the cost increased to \$35.70 /acre to plant. He noted that foreign users of Round-Up Ready soybeans are not required to same technology fees that U.S. farmers are required to pay. He said that while he liked Round-Up Ready seeds, he felt that farmers needed to be given some sort of break to keep expenses down.

Don Zolman, Farmer, Warsaw, Indiana

Mr. Zolman discussed some of the issues surrounding the competitiveness of U.S. soybean farmers. He contended that U.S. farmers can not really choose whether or not purchase Round-Up Ready soybeans given the competitiveness of the world market. He noted that in Argentina 75% of the soybean crop is planted in Round-Up Ready soybeans and that producers there do not have to pay the same technology fees as growers in the U.S. He further stated that Round-Up costs 1/3 the price in Argentina as it does in the U.S. He also said that he felt that the full burden of funding innovation has fallen on U.S. farmers, while the foreign competitors were reaping the benefits with out the same costs.

Cress Hizer, CEO of Indiana Agribusiness Associations

Mr. Hizer introduced himself and submitted a packet of information for the record (Exhibit 4). He then asked the Committee to consider seeking from some of the state's agricultural institutions that are currently in place, including the state Commissioner of Agriculture and the Seed Arbitration Board. Mr. Hizer then deferred the remainder of his testimony to certain members of the agribusiness sector scheduled to testify.

Jim Stewart, Stewart Seed

Mr. Stewart testified that he believes germplasm research needs to be protected either through contracts or through patents. He stated that his company invests hundreds of thousands of dollars each year on research and his firm must be able to recoup that investment. He further stated that the only way farmers can be successful is if they have the technology to make them successful, and that requires that firms such as his to stay in business. Mr. Stewart further noted that patents do expire.

John Stafford, Ag Alumni Seed

Mr. Stafford began his testimony by emphasizing the fact that we are in a world economy. He noted that when you look at all the costs involved for South American growers the cost difference might not be as high. Mr. Stafford also spoke on the importance of allowing researchers the ability to recoup their investment. He further suggested that additional innovation would not occur if firms were not able to recoup their costs.

Travis Brown, Manager of State and Local Affairs, Monsanto

Mr. Brown began his testimony by stating that farmers chose biotechnology and by saying that he agreed with the testimony of Jim Stewart. He noted that the soybean trait that has been discussed today, the Round-Up Ready trait, will save Indiana farmers over \$30 M dollars in chemical costs. He also said that the wide adoption of Round-Up Ready soybeans has reduced the cost of competitive herbicides from 40% to 70%, a benefit that even farmers who do not use Monsanto's seed receive. Mr. Brown testified that seed innovations must be protected for farmers to benefit.

He then discussed the situation in South America. He said that a study commissioned by the U.S. Congress found that the Argentine farmers did have cheaper input costs. However, he said, the reason for these lower costs was due to the fact that there is no patent control and because of the existence of black market seeds. Mr. Brown said that we have to be careful to protect our patent system and the innovations that it allows. He also stated that the U.S. has the safest regulatory system in the world.

In response to a question, Mr. Brown said that litigation against growers accused of being

in patent or contract violation was rare. It was stated that there are currently 23 litigations filed, and approximately 25 cases pending.

Mark Palmer, Pioneer Hi-Bred

Mr. Palmer briefly discussed the case currently before the Supreme Court, J.E.M. Agricultural Supply v. Pioneer Hi-Bred. He stated that the question before court relates to whether patent law permits the patenting of plant material. He also discussed the history of the case in terms of the previous Supreme Court ruling in *Diamond v. Chakrabarty*. Mr. Palmer ended his testimony by noting that decisions relating to these issues are the job of the U.S. Congress.

Jake Secor, DowAgro Sciences

Mr. Secor spoke to the fact that DowAgro Sciences has chosen Indiana as the location for its headquarters. He further noted that the investments DowAgro Sciences have made in the state are large.

Bob Kraft, Indiana Farm Bureau

Mr. Kraft stated that the Farm Bureau supports biotechnology but it wants to make sure that the changes do not take advantage of farmers. Mr. Kraft then discussed property rights and intellectual property rights as they relate to farmers. Mr. Kraft asked the Committee not to pass legislation that will isolate Indiana and Indiana farmers. He stated that he believed that the issue was national in scope, and should be dealt with on a national level.

Representative Friend

Rep. Friend then discussed his written statement to the Committee. (A copy of this statement can be found in Exhibit 5.) Rep. Friend stated that he is not against biotechnology or progress at all, rather he wants to address some of the gross inequities in the current system. In discussing his statement, Rep. Friend said that he has concerns about how choice farmers actual have in choosing biotechnology due to market conditions. He also made several suggestions which agribusiness could implement to help farmers.

Representative Grubb

Rep. Grubb distributed a handout that included a "Farmer's Bill of Rights". (A copy of this handout can be found in Exhibit 6.) Rep. Grubb discussed his concerns that farmers are not being adequately protected. He also reiterated his concerns that further patent protection of plant material will continue to limit the options available to farmers. He stated that the proposals he was asking the Committee to consider would take an important step in protecting Indiana farmers.

At the request of Rep. Cherry, a letter from Dr. Marvin Rode was distributed to the Committee. (See Exhibit 7).

Senator Jackman then stated that the Committee would began hearing testimony related to the Regulation of Pet Stores (HR 115). He ask Representative Cheney to begin the testimony.

Representative Cheney

Rep. Cheney began his testimony by discussing HB1277-01 and the need for the legislation. (A copy of HB1277-01 can be found in Exhibit 8). Rep. Cheney noted that there are approximately 160 to 300 pet stores in Indiana.

Gary Haynes, Board of Animal Health

In response to question about the ability of the Board of Animal Health to inspect pet stores, Mr. Haynes stated that it depends on what the legislature would want done. He said the Board currently relies on the public to report problems.

Joe Street, Pet Industry Advisory Council & Pet Centers of Indiana

Mr. Street discussed some of the health and sanitation aspects of the pet industry. He also noted that 40% of the business deals with dogs. These businesses can be voluntarily be regulated by the USDA.

Sue deVaucenne, Animal Protection Council

Ms. deVaucenne then briefly testified in favor the pet store regulation. She discussed briefly why inspection and regulations were needed.

Senator Jackman then discussed his reservations with the bill. He asked how many states have the regulation of pet stores. He also asked about the frequency of pet store complaints received by the Board of Animal Health.

In response to the Senator's questions, the Committee learned that 16 states regulate pet stores and that the Board of Animal Health receives fewer than 10 complaints per month.

Senator Jackman then thanked the Committee and the audience for their time. There being no further business, the Committee was adjourned.